IN THE HIGH COURT OF KARNATAKA KALABURAGI BENCH

DATED THIS THE 17TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MS.JUSTICE J.M.KHAZI

RSA NO. 7436 OF 2011 (PAR/POS)

BETWEEN:

1. LAXMAN
S/O VEERABHADRAPPA KUMBAR
OCC: HOUSE HOLD
R/O HAGARGOND VILLAGE
MUDDEBIHAL TALUK,
VIJAYPURA DISTRICT.

2. SHARANAPPA
S/O VEERABHADRAPPA KUMBAR
OCC: HOUSE HOLD
R/O HAGARGOND VILLAGE
MUDDEBIHAL TALUK,
VIJAYPURA DISTRICT.

...APPELLANTS

(BY SRI.SHRAVAN KUMAR MATH, ADVOCATE)

AND:

1. IRAPPA
S/O SHARANAPPA KUMBAR
SINCE DECEASED
REPRESENTED BY HIS LRs

1A. BASSAMMA
W/O IRAPPA KUMBAR
OCC: AGRICULTURE
R/O: HAGARGOND VILLAGE
MUDDEBIHAL TALUK,
VIJAYPURA DISTRICT.

1B. SHARANAPPA
S/O IRAPPA KUMBAR
OCC: AGRICULTURE
R/O: HAGARGOND VILLAGE
MUDDEBIHAL TALUK,
VIJAYPURA DISTRICT.

1C. MANJUNATH
S/O IRAPPA KUMBAR
OCC: AGRICULTURE
R/O: HAGARGOND VILLAGE
MUDDEBIHAL TALUK,
VIJAYPURA DISTRICT.

2. VEERABHADRAPPA
S/O LAKSHMAPPA KUMBAR
SINCE DECEASED REPRESENTED BY HIS L.RS

2A. GOWRAMMA
W/O DEVENDRAPPA
OCC: HOUSEHOLD
R/O KUBEHAL VILLAGE, KUNDAGOL TALUK,
DIST: DHARWAD

2B. VIJAYALAKSHMI
W/O SANGAPPA KUMBAR
OCC: HOUSEHOLD
R/O CHAVANBHAVI VILLAGE,
MUDDEBIHAL TALUK, DIST: VIJAYAPURA.

2C. SIDDAMMA
W/O REVANSIDDAPPA KUMBAR
OCC: HOUSEHOLD
R/O JAYAROOTAGI VILLAGE,
JEWARGI TALUK,
DIST: KALABURAGI

2D. GOWRAMMA
D/O VEERABHADRAPPA KUMBAR
OCC: HOUSEHOLD
R/O HAGARGONDA VILLAGE,
MUDDEBIHAL TALUK,
DIST: VIJAYAPURA.

3. BASAVANTHAPPA
S/O SHAMAPPA KUMBAR
OCC: HOUSE HOLD
R/O HAGARGONDA VILLAGE,
MUDDEBIHAL TALUK,
DIST: VIJAYAPURA.

4. CHENNAPPA
S/O YALLAPPA BYARAVADAGI
OCC: HOUSE HOLD
R/O HAGARGONDA VILLAGE,
MUDDEBIHAL TALUK,
DIST: VIJAYAPURA.

5. AYYAPPA
S/O SIDRAMAPPA KUMBAR
OCC: HOUSE HOLD
R/O HAGARGONDA VILLAGE,
MUDDEBIHAL TALUK,
DIST: VIJAYAPURA.

6. BASAVANTHAPPA
S/O SIDRAMAPPA KUMBAR
OCC: HOUSE HOLD
R/O HAGARGONDA VILLAGE,
MUDDEBIHAL TALUK,
DIST: VIJAYAPURA.

7. SANGAVVA
W/O VEERABHADRAPPA KUMBAR
OCC: HOUSEHOLD
R/O HAGARGONDA VILLAGE,
MUDDEBIHAL TALUK,
DIST: VIJAYAPURA.

8. HONNAVVA
W/O SIDRAMAPPA KUMBAR
OCC: HOUSEHOLD
R/O HAGARGONDA VILLAGE,
MUDDEBIHAL TALUK, DIST: VIJAYAPURA.

…RESPONDENTS

(BY SRI.KADLOOR SATYANARAYANACHARYA, ADVOCATE FOR
R1(A) TO R1(C);

SRI.ANANTH.S.JAHAGIRDAR, ADVOCATE FOR R2(A) TO R2(D);
SRI.SANGANABASAVA B. PATIL, ADVOCATE FOR R3;
R5 TO R7 ARE SERVED;
V/O DATED 26.07.2012 NOTICE TO R4 IS H/S;
NOTICE TO R8 IS H/S V/O DATED: 02.11.2012)

THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 21.10.2011 PASSED IN R.A.NO.15/07 BY THE LEARNED SENIOR CIVIL JUDGE & JMFC, MUDDEBIHAL, CONFIRMING THE JUDGMENT AND DECREE DATED 07.07.2007 PASSED IN O.S. NO.291/97 BY THE LEARNED CIVIL JUDGE (JR.DN) MUDDEBIHAL.

THIS RSA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 09.01.2025 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MS JUSTICE J.M.KHAZI

CAV JUDGMENT
(PER: HON'BLE MS JUSTICE J.M.KHAZI)

In this Regular Second Appeal filed under Section 100 of the Code of Criminal Procedure, defendant Nos.2 and 3 have challenged the concurrent findings of the trial Court and First Appellate Court, decreeing the suit filed by the plaintiff for partition and separate possession in suit schedule properties.

2. For the sake of convenience, parties are referred to by their ranks before the trial Court.

3. It is contended by the plaintiff that he and defendant No.5 are children of Sharanappa Kumbar. Defendant No.1 Veerabhadrappa Kumbar is their paternal uncle i.e, Sharanappa Kumbar and Veerabhadrappa are the sons of Lakshmappa Kumbar. Defendant No.4 is the wife and defendant Nos.2 and 3 are the children of Veerabhadrappa Kumbar. Defendant No.6 is the son of Yallappa Bairavadagi. Defendant Nos.7 to 9 are the children and defendant No.10 is the wife of Siddaramappa Kumbar.

4. Suit schedule properties originally belongs to families of Basarakod and Kesapur. Lakshmappa Kumbar, the propositus of the family of plaintiff, defendant Nos.1 to 5, Yallappa Bairavadagi - the father of defendant No.6 and Siddaramappa Kumbar - the father of defendant Nos.7 to 9 and husband of defendant No.10, were the joint tenants of Sy.No.144. Similarly, Lakshmappa Kumbar, Appanna Mangyal and Badshah Haneefshaha Magi were the joint tenants of Sy.No.145. After coming into force of Land Reforms Act, they applied for re-grant of the tenanted

lands by filing Form No.7. The Land Reforms Tribunal re-granted these lands in favour of the tenants. Lakshmappa Kumbar, received the tenancy rights in his capacity as the manager of the joint family. Therefore, his share in Sy.Nos.144 and 145 are joint family properties.

5. In Sy.No.145, Apanna Mangyal, Badshah Haneefshaha Magi and defendants Nos.7 to 10 have taken their share and cultivating separately. 10 acres of the land in the Sy.No.145 is left to the share of Lakshmappa Kumbar.

6. Plaintiff and defendant No.5 together, defendant Nos.1 to 4 and defendant Nos.7 to 10 are entitled for 1/3rd share each in Sy.No.144.

7. Out of 10 acres in Sy.No.145, plaintiff and defendant No.5 together entitled for half share and defendant Nos.1 to 4 are entitled for remaining half share.

8. Except the said properties partition is effected in respect of other properties. Since suit properties were in

joint possession and enjoyment of the tenants and there was dispute with regard to possession between the tenants, they were not divided between the parties. The relationship between the members of the joint family is not cordial. In this background, when plaintiff requested defendant No.1 to give the share of plaintiff and defendant No.5 in suit properties, though initially he went on postponing, ultimately he refused and challenged him to get the share from Court. On the other hand, defendant No.1 has divided Sy.No.145 between defendant Nos.2 and 3. Defendant Nos.1 to 3 and 6 are trying to alienate the suit property. In this background suit is filed.

9. Defendant Nos.7 to 10 have filed written statement in conformity with the plaint averments.

10. Defendant Nos.1 to 4 who are the contesting defendants have filed written statement, admitting the relationship between the parties and also that suit schedule properties were tenanted lands, originally belonging to Basarkod and Kesapur families. They have

also admitted that they were granted as per Form No.7 filed by the tenants. However, they have denied that Lakshmappa Kumbar-the grandfather of plaintiff was one of the tenants. On the other hand, they have claimed that it was defendant No.1, who was the tenant along with the others as detailed in the plaint. They have also denied that the grant was made in favour of the joint family. Defendant Nos.1 to 4 have contended that the grant was in favour of defendant No.1 in his individual capacity and therefore plaintiff and defendant No.5 are not having any share in suit schedule properties. Out of Sy.No.144, 4 acres on the western side and 4 acres on the eastern side are sold through sale agreement and possession is given to the purchaser and they have filed suit for specific performance and it is pending and sought for dismissal of the suit.

11. Based on the pleadings, the trial Court framed necessary issues.

12. To prove his case, plaintiff examined himself as PW-1 and relied upon Exs.P1 to 11.

13. On the other hand, defendant No.4 and two witnesses are examined as DWs-1 to 3 and Ex.D1 is marked on behalf of the defendants.

14. The trial Court accepted the contention of the plaintiff that plaintiff's grandfather Lakshmappa Kumbar was the tenant along with other tenants and the grant made in the name of defendant No.1 was on behalf of the family and therefore, plaintiff and defendant No.5 are entitled for share and decreed the suit holding that plaintiff and defendant No.5 together are entitled for 1/3rd share in Sy.No.144 and 1/2 share in Sy.No.145.

15. Aggrieved by the same, defendant Nos.2 to 5 filed R.A.No.15/2007. It came to be dismissed upholding the judgment and decree of the trial Court.

16. Aggrieved by the concurrent findings of the trial Court and First Appellate Court, defendant Nos.2 and 3 have filed this appeal contending that finding of the Courts below are against law and records and liable to be set aside. Both Courts have failed to consider that the application for grant of tenancy rights in Sy.No.145 was

filed by defendant No.1, DWs-2 and 3 and the grant is also made in their favour. Therefore, granting share in the said land is not justified. The Courts below have also erred in holding that defendant No.1 has sought grant as manager of the joint family without their being any evidence. They have also erred in calling upon defendant Nos.1 to 4 to prove that, Sy.No.145 is re-granted in favour of defendant No.1 in his individual capacity. The Courts below have also erred in granting partition in respect of suit schedule properties without including the other properties to the suit.

17. In support of his arguments, learned senior council appearing for appellant has relied upon the decision in Kenchegowda (since deceased) by Legal Representatives Vs. Siddegowda @ Motegowda (***Kenchegowda***)[1].

18. On the other hand, learned counsel for plaintiff and defendant No.5 submitted that it is the grandfather of plaintiff and defendant No.5, who was the tenant along

[1] *(1994) 4 SCC 294*

with other tenants of suit schedule properties and by the time grant came to be made as said Lakshmappa Kumbar was no longer alive, grant came to be made in the name of defendant No.1, but it is on behalf of the joint family. Therefore, rightly the Courts below are justified in accepting the case of the plaintiff and decreed the suit. No substantial question of law arise for consideration and pray to dismiss the appeal.

19. Vide order dated 05.09.2013, the appeal is admitted on the following substantial question of law:

> *1) Whether granting of occupancy right in favour of defendant No.1/appellant herein along with two other tenants who are not the members of the joint family and who are strangers to the family can be held as occupancy rights enuring to the benefit of entire family ?*

20. Heard elaborate arguments of both sides and perused the record.

21. Ex.P1 is the grant order in respect of suit properties. Though when the grant proceedings were going on Lakshmappa Kumbar, the grandfather of plaintiff was not alive and the statement came to be given by

defendant No.1, the grant order clearly reveal that it is Lakshmappa Kumbar who was the tenant of the suit schedule properties along with other tenants. Therefore, plaintiff and defendant No.5 in their capacity as grandchildren of Lakshmappa Kumbar are justified in claiming share in the suit schedule properties. Defendant No.1 cannot claim that it is a grant made in his individual capacity and that for defendants 2 to 4 to claim share to the exclusion of plaintiff and defendant No.5. In the light of the fact that Lakshmappa Kumar was one of the tenant, it goes without saying that the grant has enured to the benefit of plaintiff, defendant Nos.1 to 5.

22. It is not in dispute that the joint family of plaintiff, defendant Nos.1 to 5 are also having land in Sy.No.8/5 and 32/1. In the plaint, plaintiff has specifically pleaded that defendant No.1 has granted them share in the said properties, but refused to give share in the suit properties, giving rise to the cause of action. It is not the case of defendant Nos.1 to 4 that suit properties are joint family properties and in addition to it, joint family is also

having other properties and without including the same suit is not maintainable. In fact only before this Court, the defendant Nos.2 and 3 have taken a ground that without the other properties suit is not maintainable. For this reason, no issue was framed by the trial Court. Had defendant Nos.1 to 4 admitted that plaintiff and defendant Nos.1 to 5 constitute a Hindu joint family and suit schedule properties are joint family properties and the joint family is also having other properties and without including them, suit is not maintainable things would have been different. Therefore, the said ground urged before this Court is not tenable. Consequently, the decision relied upon by defendant Nos.2 and 3 is not applicable to the case on hand.

23. So far as the substantial question of law is concerned, as evident from Ex.P1, the grant of occupancy rights is not in favour of defendant No.1. On the other hand, it is Lakshmappa Kumbar, the father of defendant No.1 and grandfather of plaintiff and defendant No.5, who was the tenant and the grant was in his favour. Since by

the time the grant order came to be passed, Lakshmappa Kumbar was not alive, the name of defendant No.1 was inserted in the grant order. Therefore, as his legal representative and members of the joint family, the said grant has enured to the benefit of plaintiff and defendant Nos.1 to 5. Had defendant No.1 was the tenant and the grant was in his individual capacity, things would have been different. Therefore, substantial question of law framed on 05.09.2013, while admitting the appeal does not arise for consideration.

24. The findings of the trial Court as well as the First Appellate Court is based on the evidence on record. There is no perversity and in the absence of any substantial question of law, the concurrent findings of trial Court as well as the First Appellate Court cannot be interfered with. In the result, the appeal fails and accordingly, the following:

ORDER

1. Appeal filed by defendant Nos.2 and 3 under Section 100 of C.P.C is dismissed.

2. The impugned judgment and order dated 07.07.2007 in O.S.No.291/1997 on the file of Civil Judge (Jr.Dn), Muddebihal and judgment and order dated 21.10.2011 in R.A.No.15/2007 on the file of Senior Civil Judge and JMFC, Muddebihal, are hereby confirmed.

3. The Registry is directed to send back the trial Court records as well as Sessions Court records along with copy of this order forthwith.

Sd/-
(J.M.KHAZI)
JUDGE

RR